



Department of Employee Relations

July 26, 2012

Tom Barrett
Mayor

Maria Monteagudo
Director

Michael Brady
Employee Benefits Director

Troy M. Hamblin
Labor Negotiator

Memorandum

To: Department Heads, Personnel Officers, and Payroll Personnel
From: Maria Monteagudo, Employee Relations Director
Re: Civil Service Rule Changes

The Department of Employee Relations has completed a comprehensive review of civil service rules. This review was necessary as a result of Wisconsin Act 10, the expiration of all general city collective bargaining agreements and the need to clarify and/or update provisions of the rules to reflect current practice or create efficiencies.

This document summarizes the *key rule changes* that will impact personnel matters in your department. Administrative and procedural information is also included to facilitate understanding of the rules given differences in administration and interpretation relative to former provisions of collective bargaining agreements.

Classification Studies (Reference: Rule II, Sections 3, 6, and 7)

The revised rules clarify that classification studies are conducted at the request of department heads, the Mayor, the Common Council, the City Service Commission, or when DER deems it necessary. While incumbents are not able to request reclassification studies, the rule does provide appeal rights to incumbents who are not satisfied with the outcome of a reclassification. The rule requires input from the Department Head when an appeal is filed by an incumbent. The department head may choose to submit a written statement regarding the merits of the appeal or appear at the hearing. The rule also includes language that recognizes that a classification study is not needed when a new position fits within a standard job description as recognized by DER.

Time Limits in Filing Applications (Reference Rule III, Section 7)

The recruitment period has changed from a minimum of ten days to a minimum of three weeks from the date of exam announcement to reflect actual practice.

Eligibility for Promotional Examinations (Reference Rule IV, Sections 3, 5, and 6)

Eligibility for promotion after examination or eligibility for promotion without examination now requires a regularly appointed employee to complete his/her probationary period prior to promotion. Rule VIII provides flexibility to the appointing authority to complete (pass) someone's probationary period earlier than the time established under the rules with the Commission approval.

When considering appointing a person at a level below that which is authorized in the positions ordinance in the form of an "underfill", the appointing authority must establish the conditions and requirements necessary for promotion. The conditions and requirements must be communicated to the prospective employee and approved by DER before the underfill appointment can be made. *This is accomplished by completing Step 1 of the "Request to Underfill and Promotion after*



Underfill” (CS-107) form. The CS-107 is signed by the appointing officer and prospective employee and sent to DER for approval.

Once the incumbent of an approved “underfill” meets the conditions and requirements detailed under Step 1 of the CS-107 form, the department **must** inform DER of such and **may** recommend promotion of the employee. If the appointing officer does not recommend promotion, DER will review the facts and determine if the “underfill” should continue or if other appropriate action should be taken. *This means that at the time the employee meets the conditions and requirements the department is required to complete Step 2 of the CS-107 form, which is signed by both the appointing and approving officers and forwarded to DER. A letter providing details must be attached for any promotions that are not recommended.*

Medical Examination of Eligibles (Reference Rules V, Section 7 and Rule VII, Section 2)

In addition to allowing medical examinations for persons who are promoted or transferred, this rule provides that such examinations may be required when a person is reinstated.

Please note that in addition to candidates referred from eligible or reinstatement lists, current employees eligible for transfer or promotion may be required to pass a job-related medical examination. The hiring manager should assess if the position that the employee is transferring or being promoted to has physical demands or medical requirements which are substantially different than the position the employee previously held. A consultation with DER may be necessary to determine if a medical examination is appropriate and in compliance with applicable federal and state employment laws. Employees who have passed a pre-employment drug screen are not normally required to take a second drug screen for transfer or promotion unless the new position has requirements that are different than the position the person previously held (i.e. for a position requiring a CDL, a DOT Drug Screen is required).

Probationary Period (Reference Rule VIII, Section 8)

Probationary periods for persons appointed to a position or transferred or reinstated to a different department or division are six months for positions classified as non-exempt from FLSA or twelve months for positions classified as FLSA exempt. Exceptions are designated in subsections (a) through (g) of this Rule.

The provision that required a probationary period of 3 months or 50% of the usual probationary period for classifications in specific pay ranges when a person is reduced, transferred, or promoted has been eliminated.

Certification and Appointments (Reference Rule VIII, Section 2)

A person who is on a leave of absence for illness or disability or who is on a leave of absence taken under State or Federal FMLA occupies his/her position during the period of leave. When the leave exceeds one month (after exhausting the period allowed under the FMLA based upon the employee’s eligibility), and the position has since been filled by a regular appointment, the name of the employee shall be placed on a reinstatement list and certified in accordance with the certification rules. *The most significant impact of this change is that a person on FMLA who is unable to return at the expiration of the leave is eligible to get one month medical leave in addition to the FMLA leave with job protection. This month is not on a yearly basis and once exhausted the department is free to fill the position. Departments no longer have to wait for a medical leave of three months to fill a vacancy.*

Please note that rules on reinstatement following military leave or appointment in the exempt service differ as such employee is entitled to reinstatement to the position previously held regardless of the length of absence provided the person has greater seniority than the person who would be displaced.

The new rule also changes the order in which reinstatements are made by placing a higher priority for persons who have been laid off over persons returning from non-medical leave of absences longer than one month.

Failure to Respond to Notice of Certification (Reference Rule VIII, Section 5)

Candidates are given five days (instead of four) after notice of certification to respond to such notice, before additional names may be certified. *The hiring manager should make a good faith effort to contact all candidates. Eligible lists include contact information candidates have provided on their applications or by follow up with DER staff – including mailing address, phone numbers and emails. The hiring manager should keep detailed notes regarding attempts to contact the candidates.*

Reinstatement to a Lower-level Position after Promotion To and Termination from a Higher-level Position (Reference Rule X, Section 9)

This new rule establishes the reinstatement rights of civil service employees who are promoted. A person who held a regular appointment and is promoted within the same department and is subsequently terminated during probation from the higher level position has reinstatement rights to the position he/she previously held in that same department. If however the position has been filled through regular appointment, the person will be placed on the reinstatement list.

A person who held a regular appointment and is promoted to a position in a different department and is subsequently terminated from the position may request reinstatement from his/her previous department in accordance with the provisions of Rule X, Section 8 (Reinstatement Following Resignation or Voluntary Demotion).

Removal from the Reinstatement List (Reference Rule X, Section 12)

This rule now allows the Commission to remove from any reinstatement list any person whose qualifications do not meet the standards set for a vacancy at the time the vacancy is to be filled. The former rule allowed removal of individuals not having the physical qualifications for the position to be filled. Individuals who are removed from a reinstatement list may file a written appeal to the Commission.

Layoff and Reinstatement (Reference Rule X, Sections 1 and 6 and Rule XII, Sections 1- 4)

This rule has been modified to provide that the City Service Commission can approve a layoff plan based on seniority, performance standards and ratings (in lieu of efficiency), or any other plan which the Commission believes is for the general good of the service.

Seniority Considerations

Under Commission rules, seniority is calculated from the time of assumption of duties as a regular employee in the position in question or in other position of equal responsibility and duties as recognized by the Commission, without counting provisional, temporary or emergency service, and in the particular department, bureau, office or place of employment as recognized by the Commission. Relative seniority is determined within respective departments, bureaus or subdivisions thereof, offices or places of employment and by titles of positions. The seniority rights of any employee as compared with other employees holding the same title extends no further than

the department, bureau or subdivision thereof, office or place of employment. However, relative seniority rights may also be established among aggregations of persons holding positions differing in title but similar in responsibility and general nature of duties. In any case where there are persons in a department working under the same title but with such a difference in nature of work or degree of responsibility as to make it advisable to do so, separate seniority lists for such different groups may be established. Subject to review by the Department of Employee Relations, City departments will develop and recommend groups of titles for the purpose of applying the seniority rules. The Commission may determine in any case what shall constitute a department or group of employees within the meaning of this section.

Performance Standards and Ratings

Departments that want to use performance standards and ratings as the basis for a layoff plan must demonstrate to the Commission that the use of performance standards and ratings, rather than seniority, is advantageous to the City and therefore the proper basis for determining the reduction in force. All layoffs must be in good faith and not a subterfuge to remove an individual or to circumvent civil service principles. Additionally, a reduction in force cannot be based on factors that are in violation of state or federal law, including but limited to, factors such as a person's gender, race, age, disability or leave status.

The performance standards and ratings shall be:

- *based on objective, job-related quantitative and/or qualitative factors that are not be susceptible to manipulation by any participant in the evaluation or decision making process.*
- *prepared and shared with employees in advance and used during the normal course of the affected employee's service (they measure the employee's performance over a meaningful period of time that is within a relevant time period prior to a layoff).*
- *open to the inspection of the Commission and the individuals for which they are developed.*

Given that the Commission rules allow an employee who feels aggrieved by a layoff or displacement or reinstatement to file a written appeal to the Commission within ten days of the action, departments shall:

1. Work with DER to obtain seniority lists when needed and/or seek advice and guidance on developing and implementing performance standards and ratings to be used in conjunction with reductions in force and layoffs.
2. Work with DER to help "at risk employees" find suitable placement opportunities within the City.
3. Prepare layoff plans and seek Commission approval of such plans before implementation.
4. Notify "at risk employees" of layoff plan, provide copy of plan and supporting documentation and provide information about appeal rights.

Reductions (Reference Rule XIII, Section 4)

This rule now allows a department to reduce (demote) an employee from a higher level position to a lower level one on account of becoming unable to perform the duties of the higher level position. The former language only referred to allowing such reductions when the employee became physically incapacitated to perform the duties of the higher level position.